

POLITICAL REPORT

EVERY VOTE COUNTS: IMPROVING THE ELECTORAL PROCESS IN THE 2006 ELECTIONS

by Gracia Hillman

Early reports on the 2006 midterm elections indicated that the U.S. Department of Justice and other Election Day voter hotlines received fewer calls about problems than in 2004, even in proportion to the number of people who voted. In addition, exit polls from the elections reported that 88 percent of voters were confident that their votes would be counted accurately. These are good indications that improvements to our system of voting have been made under the Help America Vote Act (HAVA) of 2002.

Meeting HAVA Requirements for the 2006 Elections

HAVA was passed to make certain that every eligible citizen could vote and that each vote would be counted as intended by the voter. Under HAVA, Congress appropriated about \$3.1 billion to states to help pay the costs of improving the administration of federal elections. These improvements were necessary to correct flaws that became evident during the 2000 presidential election. Improvements included the use of voting systems that notify voters of over-vote errors on the ballot; permit voters to privately and independently correct the errors and otherwise verify and change the votes they selected before casting their ballot; and produce a permanent paper record of all votes cast, with a manual audit capacity.

Every state, the District of Columbia, Puerto Rico, and the three territories received their share of these federal funds. HAVA also established the United States Election Assistance Commission (EAC) to distribute the federal funds, monitor and audit state spending of these dollars, establish a clearinghouse of information on election administration and voting procedures, and work with the states to rebuild voter confidence in America's voting procedures.

To prepare for the 2006 elections, the EAC issued guidance and best practices on

the HAVA requirements. It also published a series of Quick Start Management Guides on managing and securing voting systems and training poll workers. The EAC also produced a Voters' Guide that informs voters about the complex process of administering elections.

Most states met the final HAVA deadlines in 2006. The mandates included replacing outdated punch card and lever action voting systems, placing at least one accessible voting system in each polling place to provide privacy and independence for voters with disabilities, and establishing a computerized database that would produce the official statewide voter registration list for use in federal elections. These changes were in addition to 2004 HAVA requirements for provisional voting as a fail-safe system for voters whose eligibility had been questioned for any reason, procedures for voters who want to file a complaint, and programs to inform voters about all of these changes.

On May 1, 2006, the U.S. Department of Justice (DOJ), which is responsible for enforcing HAVA, sued Alabama for not having the statewide voter registration database in place. The database helps ensure that ineligible or duplicate names do not remain on the lists maintained by various local jurisdictions within the state. It also helps election officials and poll workers to direct voters to their proper precincts, thus reducing the instances of provisional voting. The DOJ also sued New York for missing several of the HAVA deadlines, including the placement of at least one accessible voting system in each polling place for voters with disabilities.

The EAC's enforcement responsibilities are to make certain that the federal funds are properly spent. Improper spending or non-replacement of the voting systems can result in the repayment of funds to the state's HAVA administration fund or the federal government. For example, a special audit of California resulted in the Secretary of

State's office repaying about \$2.4 million to its state HAVA fund and \$500,000 to the federal treasury. New York will have to repay about \$50 million to the EAC because it did not replace its lever machines by the 2006 deadline.

New Voting Systems

HAVA mandated significant changes to our voting systems to reduce the error rate and produce permanent paper records of all votes cast with a manual audit capacity. The overwhelming majority of local voting jurisdictions now use some form of an optical scan or a direct recording electronic (DRE) voting system (also referred to as touch screen voting systems).

In the 2004 and 2006 elections, sporadic disruptions occurred as election officials and poll workers learned how to operate the new voting systems. These disruptions were caused by a number of things, including insufficient training of staff and poll workers on how to operate and troubleshoot the systems; simple human error of not plugging the machines into electrical outlets; calibration errors resulting from touch screen machines that are not set up with the proper balance; and paper jams and other problems with the printers that produce a voter verifiable paper audit trail (VVPAT). In 2004, there was a confirmed report of 4,000 votes being lost on one machine during early voting in one county in North Carolina. The election staff did not recognize the error warning being signaled by the machine when it had stopped counting votes.

Some public officials, scientists, and voters have expressed concern about the accuracy and security of DREs. They believe that the systems are vulnerable to tampering and hacking, though such situations have never occurred during an election. At the same time, others vouch for the accuracy, efficiency, and ease of use of DREs. They point to the features that empower voters;

the machines do not allow a voter to over-vote the ballot and they permit privacy and independence for voters with disabilities, including persons who have trouble marking a paper ballot. There are additional concerns about badly designed ballots that can result in “lost” votes due to erroneous markings by the voter and about touch screen machines that do not produce a paper ballot (VVPAT), which can be verified by the voter for accuracy. While HAVA requires a permanent paper record of all votes cast, which is not necessarily visible to the voter, VVPAT is not mandated by federal law and not all states require it.

The EAC has some authority to address these concerns. Its 2005 voluntary voting system guidelines include standards for the new electronic voting systems and VVPAT technology, and the EAC has a program to test and certify all voting system hardware and software. In addition, its best practices programs include ballot design and poll worker training.

Voting systems will be tested against the 2005 guidelines beginning in 2007. States requested this delayed time line so that they could make necessary changes to their laws to incorporate the new requirements. This is the first time that a voting system test program is being conducted under the auspices of the federal government. Manufacturer and state participation in this program is voluntary under HAVA, but manufacturers have committed to submitting all of their voting system hardware and software to this certification program. Currently, about 39 states require that the voting systems they use must be nationally certified; others are working to adopt requirement laws and procedures.

An Early Assessment of the 2006 Elections

The overwhelming majority of jurisdictions had successful experiences with their voting systems during the 2006 elections, but there were some instances of voting system and administrative anomalies in several states. EAC commissioners spent Election Day in Indiana, Kentucky,

Maryland, Ohio, and Tennessee. From the commissioners’ observations and early reports received about voting nationwide, the problems did not seem to be more heavily concentrated in minority communities than in other locations.

The most frequently reported problem was the late opening of polls caused primarily by poll workers arriving late or delays encountered in setting up the voting systems. Among the states with jurisdictions that experienced these problems, which can be corrected through more extensive poll worker training, were Colorado, Florida, Indiana, and Pennsylvania. Very long lines caused additional problems at several polling locations in Maryland and Ohio, indicating the need for more voting machines in those locations.

Several states also experienced voting machine problems. In Colorado, Connecticut, Florida, Indiana, Montana, New Jersey, Ohio, and Pennsylvania, problems were directly related to human error—election staff and poll workers forgetting required steps or not having sufficient knowledge about the system. Problems that appear to be related to machine malfunctions also were encountered in Arizona and Florida.

Election officials are responsible for post-election administrative audits to identify and fix problems; however, they cannot always fix the problems created by “misinformation” campaigns conducted by others just before or on Election Day to confuse or discourage voters. Examples of such campaigns are telephone calls, official-looking letters, or flyers that tell voters that their polling locations have been changed or offer nonexistent transportation to the polls. If successful, these tactics prevent voters from getting to their polling places. Often, voters believe that the information comes from the local or state office of elections and the ensuing confusion frequently results in mistrust and loss of faith in the system. The voters most frequently targeted by these campaigns are African American, Hispanic, low-income, or elderly.

These deceptive practices do a great disservice to the voters, the candidates, and,

most importantly, to democracy in America. As they did in this past election season, voters should clarify all information they receive with their local election officials. Further, they need to report immediately all questionable calls and other sources of “misinformation.” In turn, election officials are responsible for reporting questionable activities to the appropriate authorities, although it is usually very difficult to trace the misinformation back to the original source.

Ensuring an Accurate, Secure, and Fair Voting Process

HAVA imposed minimum standards for federal elections. Important voter rights are also afforded under the Voting Rights Act, the National Voter Registration Act (“Motor Voter”), the Voting Accessibility for the Elderly and Handicapped Act, and other federal laws. All of these laws must and can work together. The federal government delegated responsibility for the administration of federal elections to states, and there is great diversity among state and local laws that govern how this will be done. At the same time, while there is no denying that America’s voting systems will benefit from advances in technology, disruptions will occur from these necessary changes. In short, the task of achieving election reform nationwide is complex, but important to ensuring an accurate, secure, and fair voting process.

HAVA is an affirmation that all eligible citizens have the right to vote and to have that vote counted accurately. No voter should ever be turned away from the polls or otherwise disenfranchised due to voting equipment or election administration problems. At the beginning and the end, it is the voter who matters most. □

Gracia Hillman is a commissioner on the U.S. Election Assistance Commission and former chair of the EAC. For more information on HAVA, go to www.eac.gov or <http://www.jointcenter.org/programs/index.php>